

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:13-CV-00163
(5:11-CR-00053-RLV-DCK-1)

CARITINO MUJICA-VARGAS,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER comes before the Court on consideration of Petitioner’s “Pro se Motion to Withdraw and Replace Motion to Vacate, Set Aside or Correct a Federal Sentence or Conviction Pursuant to 28 U.S.C. § 2255.” (Doc. No. 2). Petitioner filed a pro se motion to vacate and the Government has not yet been ordered to respond. Petitioner is seeking to withdraw that § 2255 motion and replace it with a newly drafted § 2255 motion.

The Court finds that as the Government has not been ordered to respond to Petitioner’s § 2255 motion, his motion to withdraw and strike his § 2255 motion is, in fact, an effort to take a voluntary dismissal of that action. Accordingly, no leave or order from the Court is required. Fed. R. Civ. P. 41(a)(1)(A)(i). Therefore, Petitioner’s motion to withdraw will be dismissed as moot. The Clerk will be directed to close this civil action and open a new civil action and file Petitioner’s newly submitted § 2255 motion in that civil case.

IT IS, THEREFORE, ORDERED that:

1. Petitioner’s motion to withdraw and strike his original § 2255 motion in this civil action is **DISMISSED** as moot. (Doc. No. 2)
2. The Clerk is respectfully directed to close this civil action.

3. The Clerk is respectfully directed to open a new civil action and file Petitioner's newly submitted § 2255 motion in that case.

IT IS SO ORDERED.

Signed: February 5, 2014

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

